IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7853 OF 2005

Wasim Akhtar Niyaz Ahmed shaikh Applicant

versus

The State of Maharashtra Respondent

A.P.Mundargi, Sr.Adv. with N.U.Khan for applicant
S.S.Pednekar, APP for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 6th December 2005

PC :

1. It is not necessary to refer to the allegations against the applicant-accused in details in the light of the legal submission placed before me by Shri Mundargi. The submission is as follows.

2. Bail Application No.490/2005 was preferred by the applicant herein in the Court of Sessions, Greater Bombay. The application was filed u/s 439. It is the case of the applicant that the offences punishable are under sections 307, 506, 323, 504 R/W 34 IPC.. That being the case, it is

not for the learned Magistrate to consider the application for enlargement on bail but necessarily the powers of the Sessions Court would have to be invoked under section 439. The learned Judge, although being aware of the same, relying upon a judgement reported in 1996(2)-Mh.L.J.-48 of this Court, observed that the learned magistrate has allowed withdrawal of the application preferred by the present applicant. The withdrawal was sought by the applicant on the footing that the offence is triable by the Court of Sessions. The application ought to be considered by the Sessions Court. Now, rejecting the application for bail made in Sessions Court on ground of withdrawal of earlier one in Magistrate's Court, is something which is impermissible in law. Even otherwise, the Supreme Court decision in Pralhad Singh's case (2001-ALL MR [Cri]-739) is clear enough. It clearly lays down the principle that the Metropolitan or Lower Magistrate ought not to venture and take cognizance of an application for bail in cases where there is reason to believe that the accused is guilty of an offence punishable with sentence of death or imprisonment of life.

3. The learned APP does not dispute the above mentioned legal proposition and seeks remanding the matter back to the lower Court for appropriate orders.

4. In my view, considering the law laid down by the Hon’ble Supreme Court and the provisions contained in Sections 437 and 439, the application for bail preferred by the applicant could not have been rejected on the ground that the applicant should approach the learned Metropolitan Magistrate. Once the Metropolitan Magistrate has permitted withdrawal of application on the footing that he does not have power to enlarge the applicant on bail, then it was the duty of the Sessions Court to consider the same on merits and pass appropriate orders in accordance with law.

5. Accordingly, the criminal application for bail filed by applicant is restored to the file of Sessions Court. The Sessions Court shall deal with it on merits and in accordance with law after hearing both parties. All contentions on merits are kept open.

(S.C.DHARMADHIKARI, J.)